



September 13, 1999

Mr. John Steiner
Division Chief
Law Department
City of Austin
P.O. Box 1546
Austin, Texas

OR99-2563

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127337.

The City of Austin (the "city") received a request for eleven categories of information relating to a specific property site. You state that the city will release most of the requested information. However, you claim that the submitted documents are excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the sample documents.¹

First, you contend that the documents submitted as Exhibit A constitute attorney work product. A governmental body may withhold attorney work product from disclosure under section 552.111 if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). You explain that the information at issue was created for litigation concerning a specific piece of property. You state that the case concluded with a non-suit in March 1998. You have demonstrated in this case that the documents at issue were created for litigation. You have established the applicability of the first prong of the work product test.

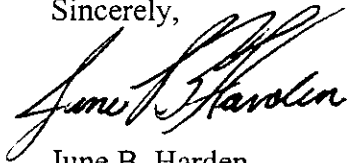
¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories. You state that the materials reveal "the thought processes of the attorneys representing the City in narrowing the legal issues, determining the best posture for the City and agreeing upon a strategy for the successful conclusion of the case." Having reviewed your arguments and the documents at issue, we conclude that you have met the two-pronged test for withholding these documents as attorney work product. Accordingly, Exhibit A may be withheld.

You also contend that Exhibit B may be withheld under section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We agree that Exhibit B contains client communications and attorney legal advice or opinion, and, therefore, may be withheld from public disclosure under section 552.107(1).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden", written in a cursive style.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 127337

Encl. Submitted documents

cc: Ms. Kimberly Frost
Jackson Walker, L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(w/o enclosures)